

REMARKS

The examiner has rejected claims 1-7, 9 and 10 under 35 U.S.C. 102(b) as being anticipated by Herman et al (US Patent 5,777,266). The examiner states that Herman et al discloses a temporary ramp for use on roadways (column 2, lines 15-16) having an elevated obstruction. The ramp has adjacent segments with the lower surfaces contacting the road and upper inclined surfaces and adjacent portions are removably coupled with male/female mating shapes which extend substantially the entire vertical height of the edge portions. The ramp is made of rigid elastomeric material. The means of use is not considered in the rejections since the claim is an apparatus claim.

Applicant submits that Herman et al is made of rigid elastomeric material and furthermore make the elevated obstruction part of the cable protection system. There are no vertical obstructions to be protected such as in roadways with sewers as in applicant's invention. Furthermore it is noted that Herman is to be primarily put across site roads and walkways which 2001 are traversed by pedestrians and possible some vehicular traffic. Vehicular traffic on side roads will be normally low speed and would easily traverse the cables which are to be protected as part of the pedestrians protection by the system in Herman. There would be no damage to the tires of the vehicles, but the system is basically possible to protect people from tripping on the cables.

In addition, if rigid elastomeric material is utilized in applicant's invention would be hit by the force if at high speed and heavy vehicles could cause considerable damage to the hard plastic while in applicant's invention and all of the references which show a device for use with man hole supports during street repairs are made with elastomeric material which is elastic and

having fluid like characteristics to absorb as much as possible the force exerted. If this material were used in Herman, no ramps would be required.

The examiner has further rejected claims 8,11,13-18 under 35 U.S.C. 103(a) as being unpatentable over Herman et al in view of McGinnis (US Patent 4,808,045). The examiner states that Herman discloses the claimed device except for a metal core, in the form of a fastener. The examiner states that it is known in the art to provide a metal core in the form of a fastener in order to anchor the device of McGinnis and keep it from moving out of place once set. The examiner states that it would have been obvious to provide the ramp of Herman with the metal/core fastener from McGinnis, in order to anchor the device and keep it from moving. It would seem illogical to add the fasteners of McGinnis in as much that there is no necessity to anchor the cable protection system of Herman and indeed the obstruction is changeable in size by adding more cable protection systems and the ramps thereto and no suggestion is made in Herman to protect a protruding object from the roadway or even from a sidewalk, disclosed or remotely proposed in Herman.

Claims 12, 21, and 22 were rejected by the examiner under 35 U.S.C. 103(a) as being unpatentable over Herman in view of Poe (US Patent 3,936,898). Poe shows a ramp hinged together for transport but shows no method of surrounding an obstacle to protect it and objects striking it from damage but rather is merely the ramp to get to a predetermined height with a wheel chair or by pedestrians.

Claim 19 was rejected by the examiner under 35 U.S.C. 103(a) as being unpatentable over Herman in view of Poe applied to claim 12 above, and further in view of McGinnis. The combination of paragraph 7 discloses the claimed device except for a fastener. McGinnins

discloses that it is known in the art to provide a fastener in order to anchor the device. Once again we have a device which is energy absorbent surrounding but not covering the obstacle in the roadway and the fastening device is to resist the force as shown in McGinnis, but there is no force or any suggestion of a force being absorbed by or transmitted to Herman et al. The cable enclosure never encounters the high speed or even relatively high speed, large pressures that are encountered in applicant invention.

The examiner rejects claims 20 and 23 under 35 U.S.C. 103(a) as being unpatentable over Shaftner in view Herman et al. and McGinnis as applied to claims 16 and 17, and further in view of Poe. The combination of patent references in paragraph 11 of the examiners action is alleged to disclose the claimed device except for a hinge mechanism. Poe discloses that it is known in the art to provide a hinge mechanism to allow a ramp to be portable. There is no one who would consider that applying the hinge mechanism of Poe to a device similar to that of McGinnis which is not separable and without ramps.

There is no obvious way to combine the hard plastic material which forms the obstacle on the sidewalk to which ramps are attached with having the obstacle present in the road to be surrounded by a large force of absorbing material of the protective device which is heavy and awkward to handle. Applicant's invention is not shown or even suggested in any of the patents relating to devices for surrounding elevated units or elements in the roadway during construction thereof, nor showing or suggesting any reduction of the size or weight or the easy applicability which occurs in applicant's invention.

The combinations as suggested by the examiner of a cable protection system which is primarily for pedestrians and controlled under the Code of Federal Regulations as to material

etc., it would not have been obvious to one skilled in the art. Applicant's invention is not anticipated alone or in the references cited. There is no suggestion in any of the inventions by McGinnis or Shaftner that the segmented pieces could be used.

This application as now presented is believed to be in condition for allowance and action to that request is respectfully requested.

Respectfully submitted,

EARL KOCH

Date: 5-14-01

By 
H. Vincent Harsha
Reg. No. 18,045

ROCKEY, MILNAMOW & KATZ, LTD.
Two Prudential Plaza
180 North Stetson Avenue - Suite 4700
Chicago, Illinois 60601
Phone: (312) 616-5400
 (309) 797-0864
Fax: (312) 616-5460
 (309) 764-1485

VERSION WITH MARKINGS TO SHOW CHANGES MADE

1. In combination, [A] a temporary ramp adapted for use on roadways under construction, the roadways having an elevated obstruction located in the roadway, said temporary ramp comprising:

first and second adjacent ramp segments each having a lower surface which contacts the roadway when installed and an upper inclined surface that vehicle wheels contact during use, said first and second adjacent ramp segments each having at least one edge portion along which each ramp segment is coupled with the other ramp section during use, said first and second ramp segments being positionable adjacent the elevated obstruction located in the roadway for allowing vehicles traveling the roadway to ride up and over the elevated obstruction.